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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. .....

TOM D. AMER,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

No. .....

YIN KIM,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES.

Consolidated Petitions for Writs of Certiorari to the Supreme Court of the State of California.

Petitioners pray that writs of certiorari issue to review the orders of the Supreme Court of the State of California entered on August 21, 1947 [Tr.A. Order, R.A. ..18..; Tr. K. Order, R.K. ..15..][1] denying petitions for writs of prohibition.

[1]The records as of the time of the filing of this petition, are not yet printed. They are being printed by the Clerk of this Court. References will be made to the Clerk's Transcript with space left to insert the references to the printed record when completed. References to the Transcript and to the Record in the Amer case will be thus: [Tr.A, 1; R.A. .....]. References to the Transcript and to the Record in the Kim case will be thus: [Tr.K. 1; R.K. .....].

Jurisdiction.

The orders of the Supreme Court of the State of California were entered August 21, 1947 [Tr.A. Order; R.A. 18; Tr.K. Order; R.K. 15]. The issue as to which petitioners seek this Court's review involves the validity under the Fourteenth Amendment to the United States Constitution of the enforcement by a State Court by way of injunction of restrictive covenant agreements which provide that an owner of a residence may not live in his home if he be not of the Caucasian race. This issue was decided adversely to petitioners over their objection in the Trial Court [Tr.A. 3; R.A. 2; Tr.K. 3; R.K. 2] and adversely to petitioners over their objections by the State Supreme Court [Tr.A. Order; R.A. 18; Tr.K. Order; R.K. 15].

The jurisdiction of this court is invoked under Judicial Code, section 237b, amended (28 U. S. C. 344 (b)).

Questions Presented.

Whether injunctive enforcement by a State Court of restrictive covenant agreements which prohibit the owners of residences to live in their own homes solely because they are not of the Caucasian race is invalid because:

1. Such enforcement violates the due process and equal protection clauses of the Fourteenth Amendment;
2. Such enforcement violates Revised Statutes, Section 1978 (8 U. S. C. 42);
3. Such enforcement violates Article 55c and 56 of the United Nation's Charter.

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Constitutional, Treaty and Statutory Provisions Involved.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in part:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Statutes, Section 1978 (8 U. S. C. 42) provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The United Nation's Charter provides in part:

> Art. 55. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: * * *
>
> (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."
>
> Art. 56. "All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Statement of the Case.

FACTS:

Petitioners are both United States citizens and decorated overseas veterans of the Armed forces [Tr.A. 1; R.A. 1; Tr.K. 1; R.K. 1] Petitioner Amer is of Chinese ancestry [Tr. 1; R.A. 1]; petitioner Kim is of Korean ancestry [Tr.K. 1; R.K. 1]. Petitioners own their own homes in Los Angeles, California, live in them and are threatened with state court injunctive orders directing them to vacate their homes because their properties are covered by restrictive covenants which provide that persons who are not of the Caucasian race cannot occupy the premises except in the capacity of servants [Tr.A. 2, p. 2 of Ex. B of App. A, R.A. 2,15; Tr.K. 2, p. 3 of App. A, R.K. 1,12]. To prevent the Trial Court from so ordering them out petitioners filed their petitions for writs of prohibition in the lower court [Tr.A. 1 *et seq.*, R.A. 1-17; Tr.K. 1 *et seq.*, R.K. 1-15] on the ground that said threatened action by the Trial Court violated the Fourteenth Amendment to the United States Constitution, the laws of the United States and the Charter of the United Nations.

DECISIONS BELOW:

On these facts the lower court denied the writs, one Justice voting to grant them [Tr.A, Order, R.A. 18; Tr.K. Order, R.K. 15]. No opinions were written.

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Reasons for Granting the Writ.

1. This court has already granted writs of certiorari in two cases involving the validity of judicial enforcement of racial restrictive covenants[2] and has before it two other petitions from the District of Columbia.[3] All of those cases however involve persons who are Negroes. The petitioners here are of different "non-Caucasian" races but are similarly affected by the restrictive covenant. The cases should all be considered together so that this court can examine into the extent to which restrictive covenants have spread themselves over the land and how they are affecting all the racial minority groups. In addition there are in the courts of California many cases involving other "non-Caucasians." For example: Japanese, *Tracy et al. v. Matsuura, et al.*, No.527327; American Indian, *Pearce et al. v. Crocker, et al.*, No. 508294, both in the Superior Court of the State of California, in and for the County of Los Angeles.

2. The lower court's upholding the propriety of a state court enforcing the covenants is contrary to the decision of this court in *Buchanan v. Worley*, 245 U. S. 60, which held that state action which forbade one race from

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[2]*Shelley v. Kraemer*, No. 72, Oct. Term, 1947 (from Supreme Court of Missouri); *McGhee v. Sipes*, No. 87, Oct. Term, 1947 (from Supreme Court of Michigan).

[3]*Hurd et al. v. Hodge, et al.*, No. 290, Oct. Term 1947; *Urciolo, et al. v. Hodge, et al.*, No. 291, Oct. Term, 1947.

moving into a block occupied by another race except with the latter's consent violated the due process clause of the Fourteenth Amendment.

3. The lower court's ruling permitting enforcement by state courts of the covenants violates the Civil Rights Act, 8 U. S. C. 42. This is an important Federal question which has not been, but should be, decided by this court.

4. The lower court's ruling permitting the enforcement of the covenants violates Article 55c and 56 of the United Nation's Charter (59 Stat. 1031, 1045-1046). This is an important Federal question which has not been, but should be, decided by this court.

5. There is widespread misunderstanding of this court's decision in *Corrigan v. Buckley,* 271 U. S. 323. Since that decision in 1926 the courts have relied on that decision as saying that state court *enforcement* of racial restrictive covenants does not violate the Constitution. That question was not before this court in that case and was not decided by it. This court should therefore consider the problem and clear up the confusion which has resulted in the establishment of a ghetto system in the United States.[4]

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[4]Robert E. Cushman, "The Laws of the Land," 36 Survey Graphic 14, 17 (1947); Gunnar Myrdal, "An American Dilemma," 624 (1944).

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ARGUMENT

IN SUPPORT OF CONTENTION THAT THE RULING OF THE LOWER COURT IS ERRONEOUS.

I.

A Court Injunction Ordering a Home Owner Out of His Own House Solely Because of His Race Is State Action Contrary to the Due Process and Equal Protection Clauses of the XIVth Amendment.

In *Buchanan v. Worley*, 245 U. S. 60; *Harmon v. Tyler*, 273 U. S. 568 and *City of Richmond v. Deans*, 281 U. S. 704, this court clearly decided that legislative action by municipalities setting up what were in effect restrictive covenants was state action contrary to the Fourteenth Amendment.

An order of a state court is state action.

Ex parte Virginia, 100 U. S. 338, 346-7;

Bridges v. California, 314 U. S. 252.

And a state cannot, through its courts, violate the Constitution any more than it can through its legislature.[5]

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[5]*Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 234, 235; *Virginia v. Rives*, 100 U. S. 313, 318; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 34-6; *Hansberry v. Lee*, 311 U. S. 32, 41; *American Federation of Labor v. Swing*, 312 U. S. 321; *Bakery Drivers Local v. Wohl*, 315 U. S. 769; *Cantwell v. Connecticut*, 310 U. S. 296; *Twining v. New Jersey*, 211 U. S. 78, 90-1; *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673; *Powell v. Alabama*, 287 U. S. 45; *Moore v. Dempsey*, 261 U. S. 86; *Scott v. McNeal*, 154 U. S. 34.

It is one thing to say that private parties may agree not to permit a certain race to occupy property. That agreement is private action, and so long as the parties do not seek state aid, the constitutional provision may not be violated. It is quite another thing, however, for the state, through its judicial agency to exercise state power and force a landowner out of his home solely because of his race. That is state action and it is state action solely on the basis of race and therefore contrary to the Constitutional provision.

The point was probably best stated by Judge Ross long ago in *Gandolfo v. Hartman,* 49 Fed. 181, 192, 193:

> "It would be a very narrow construction of the Constitutional amendment in question and of the decisions based upon it, and a very restricted application of the broad principles upon which both the amendment and the decisions proceed, to hold that, while State and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the State may lawfully do so by contract, which the Courts may enforce. Such a view is, I think, entirely inadmissible. Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the court should no more enforce the one than the other . . . But the principle governing the case is, in my opinion, equally applicable here, where it is sought to enforce an agreement made contrary to the public policy of the government, in contravention of one of its treaties, and in violation of a principle embodied in its Constitution. Such a contract is absolutely void, and should not be enforced in any court—certainly not in a court of equity of the United States."

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II.

A State Court Injunction Ousting a Landowner From His Home Solely on the Basis of His Race Violates Revised Statutes, Section 1978.

Petitioners are citizens of the United States [Tr.A. 1, R.A. 1; Tr.K. 1; R.K. 1].

Revised Statutes, Section 1978 (8 U. S. C. 42) provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

Certainly the right to hold property includes the right to use it. In the case of residential property, indeed, the right to hold such property without the right to live on it is an empty shell.

A state court order which ousts a landowner citizen from his home is just as clear a violation of the Statute as this court declared the municipal ordinance in *Buchanan v. Worley*, 245 U. S. 60 to be.

III.

State Court Enforcement of Restrictive Covenants Violates the United Nation's Charter.

Treaties of the United States are the Supreme Law of the Land.

U. S. Constitution, Article VI, Clause 8;

Kennett v. Chambers, 14 How. (U. S.) 38.

The Charter of the United Nations, and Article 55c and 56 thereof, is a Treaty of the United States.

59 Stat. 1031, 1045-1046.

These sections provide for the "universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race," and that the members (of which the United States is one) "pledge themselves to take joint and separate action" to effect that purpose. Certainly this agreement supersedes the right of any state through its court to partake of action which is in derogation of those rights and which, in effect, violate the Treaty and the Supreme Law of the Land.

Kennett v. Chambers, 14 How. 38;

United States v. Pink, 315 U. S. 203;

Hauenstein v. Lynham, 100 U. S. 483;

Gandolfo v. Hartman, 49 Fed. 181;

Cf. *Re Drummond Wren* (Canada, 1945), 4 Dom. L. R. 674.

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IV.

Corrigan v. Buckley, 271 U. S. 323, Decided by This Court in 1926 Has Been Misinterpreted and Has Given Rise to Erroneous Law in the State and Federal Courts.

In *Corrigan v. Buckley,* the question before this court was whether a restrictive covenant agreement *per se* was *void* under the Fifth, Thirteen and Fourteenth Amendments and under Revised Statutes, Section 1977, 1978 and 1979. There was no question of a court *enforcing* the agreement and ordering a citizen owner out of his own house. This court dismissed the appeal for want of jurisdiction on the ground that the provision in question prohibited governmental action and the mere making of an agreement without asking a court of equity to *enforce* it was not action by the government but was simply action between private individuals. This court specifically declined to pass on the question of enforcement because that question was not before it. Said the court:

> "And, while it was further urged in this Court that the *decrees of the courts below in themselves* deprived the defendants of their liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments, this contention likewise cannot serve as a jurisdictional basis for the appeal. Assuming that such a contention, if of a substantial character, might have constituted ground for an appeal under paragraph 3 of the Code provision, *it was not raised by the petition for the appeal or by any assignment of error, either in the Courts of Appeals or in this Court;* . . ."
>
> ". . . *we cannot determine upon the merits the contentions earnestly pressed by the defendants in*

this court that the indenture is not only void because contrary to public policy, but is also of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant."

"Hence, *without a consideration of these questions, the Appeal* must be, and is *Dismissed for want of jurisdiction."* (Italics added.)

Unfortunately the court below and many other courts have refused or neglected to recognize the limited basis of this court's previous ruling.

Conclusion.

In times such as these when housing is so critical even for the mere fortunate "Caucasion," the extension of the racial restrictive covenant has made the lot of the "non-Caucasian" even more gratingly frustrating. And the deleterious effect on the community as a whole is incalculable. It is not a question of white versus black nor even of Causasian versus non-Caucasian. Recent covenants have been drafted to include persons "who worship on the 6th day." If enforcement by state courts of covenants based upon race is permitted to stand, the logic of such decisions is too irrefutable to prevent other, equally serious, inroads into our constitutional liberties. If such is our constitutional law, then there is nothing to prevent enforcement of covenants against home owners because they are Catholics, or Jews, or Protestants, or Republicans, or Democrats, or because they believe in Socialism or because their hair is red. At last a way will have been discovered to, by those who would, evade the constitutional guarantees.

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Petitioners do not believe that they fought in, nor that World War II was fought for, the purpose of extending the ugly head of racism in this country. Rather do they believe that the war was waged to eradicate this cancer. Petitioners speak as two of the millions of little people of this country. They plead for a simple right which they apprehend is inherent in the Constitutional way of life: The right to own and live in the home of one's choice.

This court's granting of the petitions will vindicate that belief.

If this court grants these petitions it is respectfully requested that hearing be set down so that these cases may be heard along with and at the same time as *McGhee v. Sipes,* No. 87, October Term, 1947, and *Shelley v. Kraemer,* No. 72, October Term, 1947.

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